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ELECTION TRIALS.

BY THE RIGHT HON. SIR CHARLES DILKE, BART., M. P.

IT is difficult to compare the corrupt practices procedure of the United Kingdom with that of the United States. Each State of the Union has its own code, and there are great differences between State and State both in law and practice. It may, in fact, be said that there are 45 sets of election laws in the United States, and that they are being frequently revised year by year. It may, however, be of some interest even to American politicians, and to those who are concerned in purity of election, to explain the change in opinion which is taking place in Great Britain upon this difficult subject.

Some years ago, in consequence of the cost and of the unsatisfactory nature of election procedure on petitions questioning the return of members, jurisdiction in regard to them was transferred from the House of Commons to the judges. The original proposal was that each case should be tried by a single judge, but in consequence of the objections of the Irish members who feared partiality on the part of Irish judges, two judges were set to try each case. There were some of us who were always opposed to calling in the judges, and who believed that the Committee of Selection of the House of Commons would have been competent to construct a small Committee consisting perhaps of a partizan on either side, and of, say, three impartial members of high standing certain to give an unbiassed opinion in such cases. We feared that judges would insist on clear proof of some absolutely illegal act or act of corruption before they would unseat; and that no amount of evidence of doubtful practices at an election falling short of an established single clear case of a corrupt practice would secure the upsetting of a bad election. On the other hand, we feared that the clear proof of a single case of a corrupt practice would

cause the voidance by judges of an election which might on the whole have been conducted with honesty and due care. The latter of these two apprehensions has, by universal admission, been completely justified. The former of them has not been so fully justified; but the great cost of election petitions, and the fear of both parties as to the effect of revelations, continue to cause the most corrupt elections of all to pass without question. We have by the selection of a Judicial tribunal, and by the passing of an extremely severe Corrupt Practices Law containing a maximum scale of expenditure, managed to whitewash our elections, or in other words to make them look far purer and far less costly than they are. But although the new law gave us pure elections—and it must be remembered that it came into force along with the Redistribution Act which altered most of the constituencies in 1885 and 1886—the evils which formerly existed have revived, except so far as they were remedied by the extinction in 1885 of a great number of the smallest and most corrupt of the constituencies.

In the United Kingdom alone, of all countries in the world, there is still an enormous disparity in the size of the constituencies. Before 1885 the extreme disparity was in the proportion of 240 to 1. Immediately after the redistribution of 1885 the extreme disparity was 8 to 1: but in exceptional cases, such as those produced by a comparison of three of the smallest boroughs with two of the divisions of the county of Essex, they now exceed 10 to 1, and reach 12 to 1. This tenderness to very small borough constituencies causes the continued existence of some constituencies which have been corrupt throughout their history, except, perhaps, at the elections of 1885 and 1886, when agents and candidates were too frightened to bribe. Our last Corrupt Practices Law contained within it not only a maximum scale, but a solemn declaration by the candidate that he had not paid and would not pay any sum in excess of the sums publicly "returned" in much detail. It is obvious that little bribery would take place if these returns by candidates could be depended upon. It is also obvious that a candidate who will pay money, well knowing that it is meant for bribery, will not hesitate to sign a false declaration. Apart from bribery, and as regards the case of elections for county divisions in which bribery is probably unknown—as it is now in the large borough constituencies—candidates unfortunately are found willing to make false declarations

as regards total expenditure, and except in the case of scrupulous men the declaration is tending to become a mere form.

The judges never liked the duty which Parliament has thrown upon them ; and since the recent attacks which have been made upon the impartiality of some of them, and especially on those—one Liberal, one Conservative, and one Liberal Unionist—who have retained their membership of party clubs, they like it still less, if possible, than they did before. The government have promised that a select committee shall be appointed at the beginning of the session of next year to consider the whole question and to propose some change : and it is perhaps well to begin by suggesting the changes which will be recommended to this committee by some of those who have pressed for its selection.

The cost of the existing system by which the judges try the petition in the constituency affected is, though great, not so great as the cost of the old system, when the witnesses had to be kept in London. Is it possible to hit upon a combination of an improved form of the old procedure before Parliament with that which is best in the existing system, namely, local investigation ? It might be possible to send down to the locality a Statutory Commissioner, with power to make inquiries, to collect evidence, to hear the witnesses, and to report whether a *prima facie* case had been made out for trial, as well as what in that trial should be the issues to be investigated. At the present time the cost of the procedure is enormously increased by fishing inquiries of great length, which lead to no result, and hundreds of cases are started before the judges for one which is followed out to the end. Inquiry by a Commissioner would narrow the matter down to the points really deserving of decision by a competent tribunal. The ultimate trial might then be before the Parliamentary Inquisition. High character and perfect impartiality might be obtained for that tribunal if the Committee of Selection were directed to propose a very small committee, which would consist of men like Sir John Mowbray, Mr. Courtney, Mr. John Ellis, and others, of whom no member in the House of Commons would not at once recognize the integrity and the certainty of freedom from party prejudice in their decision.

It is difficult to go on as we are. After the last general election the cases of the most corrupt constituencies were as usual not brought up, while, as regards the others, a candidate has

lately been unseated on the sole ground that a trifling sum had been paid without his knowledge for a single railway fare; and a candidate on the other side unseated because a few shillings had been paid, also without his knowledge, for the bait of a horse that had brought in some voters. A case at Southampton in the last twelve months gave general dissatisfaction because one member was unseated, and the other standing along with him retained his seat—a dissatisfaction which I do not share, as I think that the ground given by the judges in this case was defensible. In the case of the St. George's division of the Tower Hamlets 352, and in the case of Lancaster 117, offences were alleged, but they were narrowed down to a very few, and an immense amount of money proved to have been wasted without result. The Lancaster case, however, clearly raised a matter, also raised at Lichfield and in other places, namely, as to when an election begins. When we were carrying the last Corrupt Practices Act we distinctly refused to fix the date, and insisted that it should be left to the election judges to consider each case upon its merits. This, however, is one of the points in which candidates are most anxious to be given a clear rule; in fact, they want the channel buoyed for them. It might be seen, however, that if any date were fixed such as that of the issue of the writ, or that of a certain time before the issue of the writ, almost all the expenditure of a rich candidate would be made to take place before the date which might be agreed upon. As it is, candidates are apt to "return" their expenditure only from the date of the issue of the writ, and to try to produce confusion as regards previous expenditure, between that which is election expenditure, as under the hypothesis it in fact all was, and that which is either registration expenditure, or general party political expenditure, and which is expressly lawful and not necessarily to be "returned."

Although the corrupt practices legislation of this country is subject on many heads to fierce onslaught at the present moment, it is on this point of date that it is especially attacked. It is pointed out that while the law limits the maximum expenditure of candidates, and insists on all expenditures being made public, it traps the candidate by not fixing when he becomes a candidate. When I was concerned with the then Sir Henry James in passing through Parliament the bill which forms the foundation of our

present law, it was, I repeat, our most special desire to abstain from fixing any such date. The objections from the point of view of candidates to having no date are obvious. The objections from the point of view of the public to having one are still more real. The moment a date is fixed candidates will everywhere, and to the greatest possible extent, spend as much money as possible before the beginning of their nominal candidature, and as little as possible after that date. The public are protected, so far as they have any protection, against the illegitimate use of wealth mainly by this existing uncertainty of the law. It may, however, be conceded that the whole of the maximum-expenditure plan has broken down, as indeed I always myself anticipated that it would break down after giving us one pure and cheap election. It may almost be cynically said that you can always obtain one pure and cheap general election by the process of passing a revolutionary Corrupt Practices Act, but that the ingenuity of agents and of candidates will prevent you from obtaining more than one upon a single act of Parliament, unless the machinery for hunting out and punishing abuses is greatly improved over the present plan.

The maximum scale is now exceeded everywhere—even in the purest county division—at every bye-election; and candidates and agents manage by some manipulation of figures to reconcile their "returns" to the obligations imposed by conscience. At a bye-election, when the rest of the country, electorally speaking, is quiet, all the party agents of both sides from all parts of the country are available. The result is that agents who notoriously would think themselves disgraced for working for less than a hundred-guinea fee, and whose able services are well worth the money, are found in dozens, instead of units, in the division, taking charge of little polling districts. At a general election, when nearly all well-worked constituencies are simultaneously fought, the average expenditure on each side is vastly less than at bye-elections, but the amount returned is about the same. On the other hand, at general elections, outside agencies, the expenditure of which is not returned at all, play a considerable part —for example, the licensed victuallers, who placard the country mainly on behalf of one political party, but no portion of whose large expenditure figures in any candidate's return.

It will be difficult under any system to prevent undue expendi-

ture by wealthy men under the guise of registration, and in the shape of subscriptions to charities, chapels, cricket clubs, foot-ball clubs, and the like. Bribery and treating, however, can be prevented; but the merger of those small borough constituencies which have been retained, by means of a further scheme of re-distribution, is a necessary step towards the abolition of direct corruption. There are boroughs remaining which are and always have been corrupt, and which will remain corrupt, so long as they continue to exist at all. A special class of candidates is generally found for them. There are men who will stand for them who will not stand elsewhere; and still more men who stand elsewhere and who will not stand for them. There were many such constituencies destroyed by the last Redistribution Act, and the county divisions in which they have been merged have swamped the corrupt elements and are free from direct corruption.

All friends of purity of election in my country ought to press not only for such a reform of our laws against electoral corruption as has been shadowed out above, but also for a further redistribution of seats.

It is not feasible to exactly redistribute seats in proportion to population. We cling to our borough boundaries and to our county boundaries. And it is impossible to arrive at equality of size in parliamentary constituencies without cutting through county and borough boundaries in forming parliamentary divisions. Without, however, destroying either county or borough boundaries, the existing discrepancies of ten or twelve to one could be reduced to discrepancies of, say, two or three to one. And if, even without redistributing seats in London, or Scotland, or in English or Irish counties, or large boroughs, we were merely to extinguish the separate representation of the smaller boroughs, and merge them in the surrounding counties, we should have abolished almost all the direct corruption that remains.

It may be said that the election petitions which followed the last general election did not concern the small boroughs, but dealt with county divisions and large towns. There were two cases in London; there was a case at Southampton; there was a case in Scotland; there were cases in two large English county divisions which appear to justify this view; but no direct corruption was proved, and little was alleged in these; whereas

we are all aware of the notorious existence, unchecked and unchallenged, of the grossest forms of corruption in some small boroughs, situate even in counties which adjoin London.

Ordinary bribery and treating are offences, the nature of which may be understood by their very names. There is one class of electoral offence which is peculiar to ourselves and which is worthy of very special notice. It consists in the payment of the travelling expenses of voters, or in the actual conveyance of voters to the poll. We have in this country an enormous class of non-resident voters. The great majority of the ownership voters in some divisions are still non-resident. The creation of purely incorporeal "faggot" votes is now forbidden. When first I entered upon political life I should have been able, as a lay impropriator of tithe, in several hardly fought county divisions, to have turned the election in each of them by dividing my holding among a number of stalwart politicians. This easy method of creating votes is now forbidden; but we still give a vote to the non-resident forty-shilling freeholder, although he has a vote in his own district where he lives. There are some Dons at the Universities, and there are some active politicians in London, who have qualifications of this kind in great numbers of county divisions. They are men of wealth, and they pay their own expenses when they go down to vote. In the case of my own constituency there are never less than two hundred working colliers, electors for the division, who are working in Wales, and few of those are able to pay their own expenses to come and vote, though some do so. If any person who may be sufficiently connected with me to be held in law to be my agent, without my knowledge, be appealed to by one of these men—both very likely being ignorant of the law—and sends him a railway ticket, I am unseated. It is a hardship or a dangerous risk, and careful candidates spend much of their time in guarding against it by personally warning every friend. To allow the payment of the expenses is to give overwhelming weight to the wealthy, but to forbid it as we now do seems hard to the voter, and is very dangerous to the innocent. The right remedy is a more purely residential suffrage such as exists in almost every other country in the world, so that we see how Election Petitions Law has carried us into redistribution of seats, and now carries us into franchise reform.

CHARLES W. DILKE.